

**Introduced by Senator McPherson**February 22, 2002

---

An act to amend Section 1524 of the Penal Code, relating to search warrants.

## LEGISLATIVE COUNSEL'S DIGEST

SB 1980, as introduced, McPherson. Search warrants.

Existing law specifies the grounds upon which a search warrant may be issued.

This bill would make a technical, nonsubstantive change to those provisions.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 1524 of the Penal Code is amended to  
2 read:

3 1524. (a) A search warrant may be issued upon any of the  
4 following grounds:

5 (1) When the property was stolen or embezzled.

6 (2) When the property or things were used as the means of  
7 committing a felony.

8 (3) When the property or things are in the possession of any  
9 person with the intent to use it as a means of committing a public  
10 offense, or in the possession of another to whom he or she may  
11 have delivered it for the purpose of concealing it or preventing its  
12 being discovered.



1 (4) When the property or things to be seized consist of any item  
2 or constitute any evidence that tends to show a felony has been  
3 committed, or tends to show that a particular person has committed  
4 a felony.

5 (5) When the property or things to be seized consist of evidence  
6 that tends to show that sexual exploitation of a child, in violation  
7 of Section 311.3, or possession of matter depicting sexual conduct  
8 of a person under the age of 18 years, in violation of Section  
9 311.11, has occurred or is occurring.

10 (6) When there is a warrant to arrest a person.

11 (b) The property or things or person or persons described in  
12 subdivision (a) may be taken on the warrant from any place, or  
13 from any person in whose possession the property or things may  
14 be.

15 (c) Notwithstanding subdivision (a) or (b), no search warrant  
16 shall issue for any documentary evidence in the possession or  
17 under the control of any person, who is a lawyer as defined in  
18 Section 950 of the Evidence Code, a physician as defined in  
19 Section 990 of the Evidence Code, a psychotherapist as defined in  
20 Section 1010 of the Evidence Code, or a clergyman as defined in  
21 Section 1030 of the Evidence Code, and who is not reasonably  
22 suspected of engaging or having engaged in criminal activity  
23 related to the documentary evidence for which a warrant is  
24 requested unless the following procedure has been complied with:

25 (1) At the time of the issuance of the warrant the court shall  
26 appoint a special master in accordance with subdivision (d) to  
27 accompany the person who will serve the warrant. Upon service  
28 of the warrant, the special master shall inform the party served of  
29 the specific items being sought and that the party shall have the  
30 opportunity to provide the items requested. If the party, in the  
31 judgment of the special master, fails to provide the items  
32 requested, the special master shall conduct a search for the items  
33 in the areas indicated in the search warrant.

34 (2) If the party who has been served states that an item or items  
35 should not be disclosed, they shall be sealed by the special master  
36 and taken to court for a hearing.

37 At the hearing the party searched shall be entitled to raise any  
38 issues that may be raised pursuant to Section 1538.5 as well as a  
39 claim that the item or items are privileged, as provided by law. The  
40 hearing shall be held in the superior court. The court shall provide

sufficient time for the parties to obtain counsel and make any motions or present any evidence. The hearing shall be held within three days of the service of the warrant unless the court makes a finding that the expedited hearing is impracticable. In that case the matter shall be heard at the earliest possible time.

(3) The warrant shall, whenever practicable, be served during normal business hours. In addition, the warrant shall be served upon a party who appears to have possession or control of the items sought. If after reasonable efforts, the party serving the warrant is unable to locate the person, the special master shall seal and return to the court for determination by the court any item that appears to be privileged as provided by law.

(d) As used in this section, a “special master” is an attorney who is a member in good standing of the California State Bar and who has been selected from a list of qualified attorneys that is maintained by the State Bar particularly for the purposes of conducting the searches described in this section. These attorneys shall serve without compensation. A special master shall be considered a public employee, and the governmental entity that caused the search warrant to be issued shall be considered the employer of the special master and the applicable public entity, for purposes of Division 3.6 (commencing with Section 810) of Title 1 of the Government Code, relating to claims and actions against public entities and public employees. In selecting the special master the court shall make every reasonable effort to ensure that the person selected has no relationship with any of the parties involved in the pending matter. Any information obtained by the special master shall be confidential and shall not be divulged except in direct response to inquiry by the court.

In any case in which the magistrate determines that, after reasonable efforts have been made to obtain a special master, a special master is not available and would not be available within a reasonable period of time, the magistrate may direct the party seeking the order to conduct the search in the manner described in this section in lieu of the special master.

(e) Any search conducted pursuant to this section by a special master may be conducted in ~~such a manner as to permit that~~ *permits* the party serving the warrant or his or her designee to accompany the special master as he or she conducts his or her search. However, that party or his or her designee shall not



1 participate in the search ~~nor shall he or she~~ or examine any of the  
2 items being searched by the special master, except upon  
3 agreement of the party upon whom the warrant has been served.  
4 (f) As used in this section, “documentary evidence” includes,  
5 but is not limited to, writings, documents, blueprints, drawings,  
6 photographs, computer printouts, microfilms, X-rays, files,  
7 diagrams, ledgers, books, tapes, audio and video recordings, films  
8 or papers of any type or description.  
9 (g) No warrant shall issue for any item or items described in  
10 Section 1070 of the Evidence Code.

